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- Author**
- The principal authors of this final rule are Dr. Lucy A. Jordan, U.S. Fish and Wildlife Service, John L. Anderson, Botanist, formerly with the U.S. Fish and Wildlife Service (see ADDRESSES above), and Dr. Harold M. Tyus, U.S. Fish and Wildlife Service, Denver Regional Office.

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended, as set forth below:

## PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following in alphabetical order under the family Brassicaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.  
\* \* \* \* \*  
(h) \* \* \*

| Species                        |                                | Historic range   | Status  | When listed | Critical habitat | Special rules |
|--------------------------------|--------------------------------|------------------|---------|-------------|------------------|---------------|
| Scientific name                | Common name                    |                  |         |             |                  |               |
| Brassicaceae—Mustard family:   |                                |                  |         |             |                  |               |
| <i>Eutrema penlandii</i> ..... | Penland alpine<br>fen mustard. | U.S.A (CO) ..... | T ..... | 509         | NA               | NA            |

Dated: June 24, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93-17933 Filed 7-27-93; 8:45 am]

BILLING CODE 4310-25-P

## 50 CFR Part 17

RIN 1018-AB56

**Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant *Astragalus applegatei* (Applegate's Milk-vetch)**

**AGENCY:** Fish and Wildlife Service, Interior.

## ACTION: Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) determines the plant *Astragalus applegatei* (Applegate's milk-vetch) to be an endangered species under the authority contained in the Endangered Species Act of 1973, as amended (Act). This species has two extant populations in Klamath County, Oregon. The largest population is found on 6 acres of private land estimated to contain up to 30,000 individuals. The Nature Conservancy has leased this land on a year-by-year basis for *Astragalus applegatei* management. However, it is zoned for commercial development. The second site, on State of Oregon land,

supports approximately 30 to 80 plants in three patches scattered over 1 acre (J. Kagan, Oregon Heritage Program, pers. comm., 1992). Survival of this species is threatened primarily by the loss of habitat from past and potential development and road construction. The increased number of plants observed in recent surveys is believed to be a result of studies more quantitative in nature, not an expansion or improvement of the species habitat. Wildlife grazing has been determined to be another serious threat to the two remaining populations. This plant's palatability to cattle is an additional factor contributing to its current status. This rule implements the protection and

recovery provisions provided by the Act for this plant.

**EFFECTIVE DATE:** This rule is effective on August 27, 1993.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Boise Field Office, 4696 Overland Road, room 576, Boise, Idaho 83705.

**FOR FURTHER INFORMATION CONTACT:** Robert Parenti at the above address (telephone number 208-334-1931).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Astragalus applegatei* was first discovered near Klamath Falls, Oregon, in 1927 by Morton Peck. Peck subsequently collected the species 2 miles (3.2 kilometers) east of Keno, Oregon, in 1931 and then described it (Peck 1936). It was thought to be extinct until its rediscovery in 1983 by James Kagan of the Oregon Natural Heritage Program (Kagan 1983). This perennial herbaceous plant of the pea family (Fabaceae) grows to approximately 1 foot (0.3 meters) in height and reproduces only by seed. The Melissa blue butterfly (*Lycaedies argycogromon*) is a specific known pollinator. The anthers and stigma ripen simultaneously, enabling self-pollination. Plants produce light purple, pea-like flowers, and 0.3-0.5 inch (8-13 millimeter) seed pods during June and July. *Astragalus applegatei* can be distinguished from other species of *Astragalus* in the area by its slightly curved stems, the number and location of flowers, and apparent inability to colonize dry, disturbed areas.

*Astragalus applegatei* grows in flat, open, seasonally moist remnants of floodplain alkaline grassland of the Klamath Basin. The species is a member of the *Poa nevadensis-Puccinellia lemmonii* grassland community (Yamamoto 1985). This community is characterized as a bunchgrass flat, with about 10 to 20 percent exposed ground. The substrate is poorly drained, fine silt loam with an underlying hardpan at depths of 20 to 40 inches (51 to 102 centimeters). Periodic flooding was probably a natural feature of this habitat type. The adjacent community is alkaline open shrubland dominated by *Sarcobatus vermiculatus* and *Distichlis stricta*. *Sarcobatus vermiculatus* occasionally occurs in the grassland community.

*Astragalus applegatei* historically occurred at three sites near Klamath Falls, Oregon. Extensive agriculture use has apparently extirpated one site near Keno, Oregon. The last known

observation/collection at this site was in 1931. Further survey efforts near the Keno, Oregon, site have failed to locate the plant(s) (Yamamoto 1985; James Kagan, Oregon Natural Heritage Program, pers. comm., 1992).

*Astragalus applegatei* remains at two sites. The largest population, limited to 6 acres estimated to support up to 30,000 individuals (D. Salzer, Oregon Chapter of The Nature Conservancy, *in litt.*, 1991), is 1 mile south of downtown Klamath Falls. The initial 1,000 plant estimate for this site was a very rough estimate made without quantitative sampling. Field surveys conducted from 1988 through 1991, and extrapolations from those data, projected the population estimate to be up to 30,000 plants (Salzer, *in litt.*, 1991). The increased number of plants observed in recent surveys is believed to be a result of the more intensive studies, not an expansion or improvement of the species' habitat (Kagan, pers. comm., 1993).

The threats to this population include urban development and road construction. Portions of the population and remaining habitat for *Astragalus applegatei* have already been destroyed by the construction of a major four-lane avenue bisecting this population (Kagan, pers. comm., 1992). An additional road may soon be under construction through the remaining plant habitat. Remaining plants within this population occur on adjacent land that is zoned for light industrial, general commercial, or heavy industrial use. This area is posted with signs advertising future commercial development (Yamamoto 1985; Kagan, pers. comm., 1992). Extensive urban development has occurred in this area for many years and is continuing. If current land use patterns continue, this area will be further developed, eliminating this plant species (Kagan, pers. comm., 1992).

The third site, occurring on less than 1 acre, is located on the State's Klamath Management Area, approximately 6 miles from the above population. This site supports an estimated 30 to 80 plants. The plants appear to be older with no evidence of reproduction. Low population numbers, loss of habitat, wildlife grazing (rabbits), and management controls altering natural regimes (periodic wildfire and flooding) pose serious threats to this population (Kagan, pers. comm., 1992).

*Astragalus applegatei* is affected by the lack of seasonal flooding. Seasonal flooding may provide openings for the establishment of *Astragalus applegatei* and limit the dominance of other species (Yamamoto 1985).

**Previous Federal Action**

Federal action on this species began because of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. In that document, *Astragalus applegatei* was considered to be threatened. The Service published a notice on July 1, 1975, in the Federal Register (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act and gave notice of its intention to review the status of the plant taxa named therein. As a result of that review, the Service published a proposed rule on June 16, 1976, in the Federal Register (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species. The list of 1,700 plant taxa was assembled based on comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, Federal Register publication. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. The Service published a notice on December 10, 1979, in the Federal Register (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In all three cases, *Astragalus applegatei* was treated as a category 1 candidate. Taxa in category 1 are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, to be treated as being newly submitted on that date. That was the case for *Astragalus applegatei* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of this species was warranted but precluded by other pending listing actions, according to

section 4(b)(3)(B)(iii) of the Act. Notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. In October of 1984, 1985, 1986, 1987, 1988, 1989, and 1990, the Service found that the petition to list *Astragalus applegatei* was warranted but precluded by listing actions of higher priority.

The Service published a proposal on November 26, 1991, to list *Astragalus applegatei* as an endangered species (56 FR 59917). This proposal was based, in large part, on additional survey information and occurrence data, and information on pending projects that would adversely affect the plant. The Service now determines *Astragalus applegatei* to be an endangered species with the publication of this rule.

#### Summary of Comments and Recommendations

In the November 26, 1991, proposed rule (56 FR 59917) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final listing decision. The public comment period ended on February 3, 1992. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. The Service received two comments during the comment period. One comment expressed support for the listing proposal, while the other comment opposed listing. The comment opposing the listing proposal and the Service's response is summarized as follows:

**Issue:** The commenter said the government has not shown sufficient effort, study, or facts to substantiate this listing. The commenter also said that populations of vetch exist throughout the county, State, and entire northwest. Furthermore, initial taxonomical work and subsequent verification were not extensive enough to imply that this subspecies is threatened.

**Service Response:** This plant was first discovered near Klamath Falls, Oregon, in 1927, and collected again in 1931 near Keno, Oregon. The Keno, Oregon, area was carefully searched in 1982, 1983, 1984, 1985, and more recently in 1990, 1991, and 1992. Exhaustive survey efforts for many years have failed to locate plants at this site.

The largest Klamath Falls population, containing up to an estimated 30,000 plants on 6 acres, is 1 mile south of downtown Klamath Falls. Threats include expanding urban development

and road construction. Part of this population and most of its habitat have already been destroyed by a four-lane avenue bisecting the population (Kagan, pers. comm., 1992). Another part of the population is situated on land posted with signs advertising future development.

Most *Astragalus* species are plants adapted to growing in moisture deficient environments. However, *Astragalus applegatei* is a plant growing in a moderately moist environment (Barneby 1964). Extensive field surveys conducted in potential habitat of *Astragalus applegatei* have failed to yield additional locations.

No alternative taxonomic treatments are known. The last major comprehensive treatment for the genus *Astragalus* was made by Barneby (1964). No taxonomic changes were made on this species. There is no evidence that *Astragalus applegatei* was ever classified as a subspecies.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Astragalus applegatei* should be classified as an endangered species. Procedures found at section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus applegatei* Peck (Applegate's milk-vetch) are as follows:

**A. The present or threatened destruction, modification, or curtailment of its habitat or range.** *Astragalus applegatei* has historically been reported from three sites in Klamath County, Oregon. Extensive agricultural use has extirpated one of these populations located 2 miles east of Keno, Oregon. Recent survey efforts in the Keno area have failed to locate the species since its observation/collection in 1931 (Kagan, pers. comm., 1992).

A second, and the largest population, with up to 30,000 plants on 6 acres, is 1 mile south of downtown Klamath Falls. A major four-lane avenue bisecting this population was constructed, resulting in the elimination of some of the plants and most of the species habitat. Recent construction of a culvert over a large ditch that bisects the population has also destroyed plants and their habitat. The construction destroyed plants and their habitat by

compacting the soil, denuding the surface, and crushing plants under dumped dirt and wheels of construction equipment. An additional road may soon be under construction through the remaining plant habitat (Kagan, pers. comm., 1992). Another portion of the population is situated on land posted with signs advertising future commercial development (Yamamoto 1985; Kagan, pers. comm., 1992). The Oregon Field Office of The Nature Conservancy has a year-to-year lease to manage the area for the plant. However, they have been unsuccessful in negotiating the acquisition of the property from the private landowner. It continues to be zoned for commercial development. This population is probably the only viable population left. If this area is commercially developed, *Astragalus applegatei* will probably be lost as a viable species (Kagan, pers. comm., 1992).

The third site contains 30 to 80 plants in an area less than 1 acre in size on the State's Klamath Wildlife Management Area. The plants are older and show no evidence of reproduction. This site is threatened by low population numbers, loss of habitat, wildlife grazing (rabbits), and management controls that alter natural fire and flooding regimes (Kagan, pers. comm., 1992).

*Astragalus applegatei* is adversely affected by lack of seasonal flooding. Irrigation and water control along the Klamath River have eliminated the seasonal flooding that once occurred along floodplains supporting the species. Seasonal flooding is important in that it may provide openings for the establishment of *Astragalus applegatei* and limit the dominance of other species (Yamamoto 1985).

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** *Astragalus applegatei* was only recently rediscovered. Six collections of the species exist. Because the plants are easily accessible by road, illegal collecting for scientific or horticulture purposes or excessive visits by individuals interested in seeing rare plants could become a threat.

**C. Disease or predation.** Chewed stems and rabbit-like pellets were found at the remaining extant populations. Rabbit predation has become one of the major obstacles to the survival of *Astragalus applegatei* (D. Borgois, The Nature Conservancy, pers. comm., 1992). The palatability of *Astragalus applegatei* to cattle is a factor in the absence of this species in areas grazed by cattle (Kagan, pers. obs., 1985 and 1992).

**D. The inadequacy of existing regulatory mechanisms.** Under the

Oregon Endangered Species Act (OAR 564.100–564.135) and pursuant regulations (OAR 603, Division 73) the Oregon Department of Agriculture has listed *Astragalus applegatei* as endangered. This statute prohibits the "take" of State-listed plants on State-owned or State-leased lands only. The smaller of the two remaining populations of *Astragalus applegatei* occurs on State-owned land. The larger population occurs on private land where the plant is not protected from actions the landowner may take that would adversely affect the species. The landowner has indicated that the private land is being held for development purposes (Kagan, pers. comm., 1992).

Some of the habitat occupied by *Astragalus applegatei* may be regulated as wetlands and subject to regulation under section 404 of the Clean Water Act by the U.S. Army Corps of Engineers (Corps). Under section 404 of the Clean Water Act, the Corps regulates the discharge of fill into waters of the United States, including wetlands. Nationwide Permit No. 26 has been issued to regulate fill in wetlands under 10 acres. This nationwide permit would apply to all sites where *Astragalus applegatei* occurs. The Corps circulates a pre-discharge notification to the Service and other interested parties for comment under this permit program.

Individual permits are normally just required for fill in wetlands greater than 10 acres. However, the Corps has discretionary authority and can require an individual permit if resources are believed to be important regardless of the wetland's size. In practice, however, the Corps rarely requires an individual permit when a project would qualify for a nationwide permit, unless a threatened or endangered species occurs on the site. The Corps is required to consult under section 7 of the Act prior to issuing nationwide or individual permits that may affect a federally listed species (see below under "Available Conservation Measures"). The review process for the issuance of individual permits is more extensive, and conditions may be included that require the avoidance or mitigation of environmental effects.

**E. Other natural or manmade factors affecting its continued existence.**

*Astragalus applegatei* has a poor reproductive potential due to its apparent inability to colonize dry, disturbed areas and ability to reproduce only by seed. The small number of populations, and small number of individual plants for each population of this species, increases the potential for extinction from stochastic events such as flood or fire. The limited gene pool

may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy many of the individuals of this species.

The Klamath Wildlife Management Area population is threatened by extensive flooding. Although seasonal flooding may provide openings for the establishment of *Astragalus applegatei*, this population occurs in a small, localized area near the river, which could be destroyed if extensive flooding were to occur. The largest Klamath Falls' population is also vulnerable to extirpation. Continued reduction of the size of this population would render this site more susceptible to other human-caused or natural disturbances. In addition, genetic integrity would be lost, if the largest and only viable population continues to shrink (Kagan, pers. comm., 1992).

The Service has carefully assessed the best scientific and commercial information available concerning the past, present, and future threats faced by this species. Based on this evaluation, the preferred course of action is to list *Astragalus applegatei* as endangered. The small number of individuals left, poor species reproductive potential, and vulnerability to destruction by development and road building show that the species is in danger of extinction throughout all or a significant portion of its range, and therefore fits the Act's definition of endangered. Critical habitat is not being designated for this species for reasons discussed in the Critical Habitat section of this rule.

**Critical Habitat**

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species. Such a determination would result in no known benefit to *Astragalus applegatei*. Publication of precise maps and descriptions required when critical habitat is designated would increase the degree of threat to this plant from possible take, collection, or vandalism. This would in turn contribute to its decline and increase enforcement problems. All involved parties and principal landowners have been notified of the importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for

*Astragalus applegatei* is not prudent at this time.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

*Astragalus applegatei* does not occur on Federal land. Habitat for this plant may be regulated by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act. Individual or nationwide permits may not be issued where a federally listed endangered or threatened species would be affected by a proposed project without first completing formal consultation pursuant to section 7 of the Act.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plant species set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to *Astragalus applegatei*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce during a commercial activity; sell or offer for sale in interstate or foreign commerce;

remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such plants on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy the plant on any other area in knowing violation of any State law or regulation, or during any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is uncommon in cultivation and is very rare in the wild.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203-3507 (telephone number 703-358-2104).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### References Cited

- Barneby, R.D. 1964. Atlas of North America *Astragalus*. Memoirs of The New York Botanical Garden, Vol. 13. 1188 pp.  
Kagan, J. 1983. Unpublished field report for *Astragalus applegatei*. The Nature Conservancy, Portland, Oregon.  
Peck, M.E. 1936. Six new plants from Oregon. Proc. Biol. Soc. Wash. 49:111.  
Yamamoto, S. 1985. Unpublished status report for *Astragalus applegatei*. Oregon Natural Heritage Data Base, Portland, Oregon. 35 pp.

#### Author

The primary author of this final rule is Dr. Robert Parenti, U.S. Fish and Wildlife Service, 4696 Overland Road,

Boise, Idaho 83705 (telephone number 208-334-1931).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and Recordkeeping requirements, Transportation.

#### Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

#### PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Fabaceae, to the List of Endangered and Threatened Plants to read as follows:

**§ 17.12 Endangered and threatened plants.**  
\* \* \* \* \*  
(h) \* \* \*

| Species                            |                         | Historic range    | Status  | When listed | Critical habitat | Special rules |
|------------------------------------|-------------------------|-------------------|---------|-------------|------------------|---------------|
| Scientific name                    | Common name             |                   |         |             |                  |               |
| Fabaceae—Pea family:               |                         |                   |         |             |                  |               |
| <i>Astragalus applegatei</i> ..... | Applegate's milk-vetch. | U.S.A. (OR) ..... | E ..... | 510         | NA               | NA            |

Dated: July 12, 1993.

**Richard N. Smith,**  
Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93-17934 Filed 7-27-93; 8:45 am]

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